

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
No. 4:12-CV-31-D

TERESA DAIL TRIPP,

Plaintiff,

v.

CARMIKE CINEMAS, INC.,

Defendant.

ORDER

On January 30, 2013, plaintiff filed a request for the court to dismiss this action without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) [D.E. 17]. On February 20, 2013, defendant responded in opposition to dismissing the action without prejudice or, alternatively, to condition dismissal on plaintiff's payment of defendant's attorney's fees and taxable costs [D.E. 19]. On February 26, 2013, plaintiff replied [D.E. 21].

After considering plaintiff's request for dismissal without prejudice in accordance with the governing standard, plaintiff's request is granted subject to conditions. See Fed. R. Civ. P. 41(a)(2); GO Computer, Inc. v. Microsoft Corp., 508 F.3d 170, 177 (4th Cir. 2007); Davis v. USX Corp., 819 F.2d 1270, 1273–75 (4th Cir. 1987). Specifically, the court conditions dismissal upon plaintiff paying part of defendant's taxable costs. See, e.g., Davis, 819 F.2d at 1276. The court denies defendant's request for attorney's fees. See id.; Dean v. WLR Foods, Inc., 204 F.R.D. 75, 80 (W.D. Va. 2001).

Defendant requests total payment of \$2,143.20 in costs. Welch Aff. [D.E. 19-2] ¶ 17. First, defendant requests \$350.00 in filing fees for removing this action from state court to federal court.

See id. ¶ 16(a). The court awards these court costs. See 28 U.S.C. § 1920(1). Second, defendant requests \$1500.70 for the cost of eight depositions. See Welch Aff. ¶ 16(b)–(c). The court awards defendant these deposition costs. See, e.g., Hexion Specialty Chems., Inc. v. Oak-Bark Corp., No. 7:09-CV-105-D, 2012 WL 2458638, at *5–6 (E.D.N.C. June 27, 2012) (unpublished); Zeuner v. Rare Hospitality Int’l, Inc., 386 F. Supp. 2d 635, 640 (M.D.N.C. 2005). Third, defendant requests \$292.50 for defendant’s share of the mediation fee. See Welch Aff. ¶ 16(d). Mediator fees are not recoverable costs and the court denies this request. See, e.g., Hexion Specialty Chems., 2012 WL 2458638, at *6; Zeuner, 386 F. Supp. 2d at 640. Thus, the court awards defendant total recoverable costs of \$1850.70.

In sum, plaintiff’s request for dismissal without prejudice [D.E. 17] is GRANTED subject to plaintiff paying defendant \$1850.70 in costs.

SO ORDERED. This 19 day of April 2013.


JAMES C. DEVER III
Chief United States District Judge